

IN THE CHANCERY COURT OF WILLIAMSON COUNTY, TENNESSEE
FOR THE TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN, TENNESSEE

STATE OF TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	No. 28431
)	
ACCESS RESOURCE SERVICES, INC.)	
)	
)	
)	
Defendant.)	

AGREED FINAL JUDGMENT

Plaintiff, the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter, on behalf of David A. McCollum, Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, Access Resource Services, Inc., a Delaware corporation (hereinafter referred to as “Access”), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. Defendant enters into this Judgment solely to avoid the time and expense associated with litigation. This is an Agreed Final Judgment (hereinafter referred to as “Judgment”) for which execution may issue. This Judgment only resolves matters set forth in the State’s Complaint.

This Judgment is entered into by Defendant with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed on it by this Judgment and that Defendant consents to its entry without further notice. Defendant acknowledges that no offer, agreements or inducements of any nature whatsoever have been made to it by the Plaintiff or its attorneys or any employee of the Attorney General’s Office to procure this Judgment.

This Judgment does not constitute an admission of any kind by Defendant. The Judgment does not constitute a finding by any court that Defendant has engaged in any act or practice declared unlawful by any laws, rules or regulations of the State of Tennessee.

In the event the Court shall not approve this Judgment, this Judgment shall be of no force and effect against the State of Tennessee.

This Judgment shall bind Defendant and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest to Defendant.

Defendant has, by signature of its counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with any judicial proceedings upon this Judgment.

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over Defendant for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Judgment, including the enforcement of compliance therewith and penalties for violation thereof. Defendant agrees to pay all court costs and attorneys' fees associated with any successful petitions by the State to enforce any provision of this Judgment against Defendant.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Judgment is solely in the Chancery Court of Williamson County, Tennessee.

3. PARTIES

3.1 Defendant warrants and represents that it is the proper party to this Judgment. Defendant further acknowledges that it understands that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside this Judgment, or request that Defendant be held in contempt, if the State so elects.

3.2 Defendant, Access Resource Services, Inc., a Delaware corporation, represents that

Access Resources, Inc. is the true legal name of the entity entering into this Judgment.

3.3 Defendant stipulates that its principal place of business is 2455 East Sunrise Boulevard, 10th Floor, Ft. Lauderdale, Florida 33304, and was engaged in the business of providing pay-per-call services.

3.4 Defendant understands that the State expressly relies upon these representations and if said representations are false, inaccurate, deceptive, unfair or misleading, the State has the right to move to vacate or set aside this Judgment or request that Defendant be held in contempt, if the State so elects.

4. DEFINITIONS

As used in this Agreed Final Judgment, the following words or terms shall have the following meanings:

- 4.1 “Agreed Final Judgment” or “Judgment” shall refer to this document entitled Agreed Final Judgment in the matter of *State of Tennessee v. Access Resource Services, Inc., a Delaware corporation*.
- 4.2 “Clear and Conspicuous” or “Clearly Conspicuously” means a statement is “clear and conspicuous” or “clearly and conspicuously” disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location and audibility, compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence, that warnings, safety disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading.
- 4.3 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 4.4 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 4.5 “Defendant” and/or “Access” shall refer to Access Resource Services, Inc., others acting on its behalf or at its direction including principals, officers, owners, directors, employees, agents, independent marketers, telemarketers, direct mail marketers, servants, subsidiaries, representatives, successors and assigns of Access Resource

Services, Inc., or other business entities whose acts, practices, or policies are directed, formulated or controlled by Access Resource Services, Inc.

- 4.6 “Pay-per-call service” shall have the same definition as currently set out in the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. § 5714(1) and 16 C.F.R. § 308.2(c).
- 4.7 “Plaintiff”, “State of Tennessee”, “the State” or “Attorney General” shall refer to the Office of the Tennessee Attorney General and Reporter.
- 4.8 “Pre-subscription” shall refer to a type of billing for services where said services are billed in a non-telephonebilling manner.
- 4.9 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

5. FINDINGS

Defendant stipulates that the findings below are true and correct to the best of its knowledge.

Defendant understands that the State expressly relies upon the stipulations and information provided by Defendant and if they are false, misleading, or inaccurate, the State has the right to move to vacate or set aside this Judgment and proceed under the original Complaint if the State so elects:

5.1 All collections and billing activity by Defendant was halted in Tennessee on or before July 8, 2002.

5.2 Defendant hereby retracts its claim for payment from Tennessee consumers from approximately \$2,849,000.00 in alleged unpaid telephone charges dating back to August 2000, and approximately \$15,900,000.00 since January 1998. Defendant certifies that said payments/ “collectibles” are retracted and will not be pursued.

5.3 Defendant has submitted to the State documentation on which the State relies. Defendant submits that the figures contained in these documents are accurate and complete.

5.4 Defendant represents and warrants that:

- (a) the parties intend that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant, within the meaning of 11 U.S.C. § 547 (b)(1);
- (b) the parties conclude that these mutual promises, covenants and obligations do,

in fact, constitute such a contemporaneous exchange;

- (c) the Defendant did not become insolvent as a result of the entry of this Judgment or the promises, covenants and obligations contained herein; and,
- (d) the Defendant is receiving reasonably equivalent value, so as to take the promises, covenants and obligations outside the purview of 11 U.S.C. § 548 (a)(1)(B)(i).

5.5 Defendant represents to the State that Defendant has not placed any telemarketing calls to, or caused any telemarketing calls to be placed to, any Tennessee consumer since March 7, 2002. Defendant further states that Defendant ceased placement of all forms of advertising including video, print, direct mail and e-mail on or before March 7, 2002, thereby ceasing all forms of advertising to Tennessee consumers.

5.6 Defendant represents to the State that it blocked all calls from Tennessee consumers to its pay-per-call services on June 4, 2002, and will not cause this block to be removed or otherwise reinstitute any practice in the state of Tennessee with regard to providing psychic pay-per-call services.

6. APPLICATION OF ORDER TO DEFENDANT AND ITS SUCCESSORS

6.1 Defendant certifies that the duties, responsibilities, burdens and obligations undertaken in connection with this Judgment shall apply to Defendant, acting through each of its officers, directors, partners, subsidiaries, affiliates, managers, parents, related entities, agents, assigns, representatives, employees, successors, sales staff and any and all other persons or entities directly or indirectly on its behalf.

7. PERMANENT INJUNCTION AND REHABILITATION

Accordingly, Defendant hereby certifies that immediately upon the entry of this Judgment, pursuant to Tenn. Code Ann. § 47-18-108(b)(2), Defendant and anyone in concert with it shall be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices set forth herein.

7.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of its business. Defendant shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to § 47-18-104(b)(27) which prohibits any and all unfair and/or deceptive acts or practices.

7.2 Defendant shall not limit the damages or recovery to which consumers may be entitled under Tennessee law.

7.3 Defendant shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of Defendant.

7.4 Defendant shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Defendant have been approved, in whole or in part, by the State.

7.5 Defendant shall not advertise from, to, or within (in whole or in part) the State of Tennessee the sale or promotion of psychic pay-per-call services by means of television, radio, newspaper, periodical, direct mail, Internet or any other form of advertising or electronic media.

7.6 Defendant shall cease and not recommence offering, selling and providing psychic pay-per-call services in Tennessee or to Tennessee consumers.

7.7 Defendant is otherwise enjoined and restrained with respect to the offer, solicitation and provision of any services, pay-per-call or otherwise, from engaging in practices which violate the Act including, but not limited to, the following practices:

- a. Advertising or otherwise representing to consumers that pay-per-call services are “free” or that other products or services are “free” if there is a cost to the consumer associated with said product or service;
- b. Misrepresenting the nature, price, or cost of the goods or services being offered or otherwise failing to clearly and conspicuously disclose costs or terms of the sale or purchase of the product or service;
- c. Allowing access by minors under the age of 18 unless Defendant in its advertising and the preamble to a pay-per-call either instructs callers under age to terminate the call or advises the caller to terminate the call unless he or she has parental permission;

d. Failing to cancel a bill or other collection effort when the consumer represents that the service was obtained without authorization or was obtained by a minor unless Defendant has a written agreement from the minor's parent or guardian;

e. Continuing to make outbound calls to consumers offering pay-per-call services after consumers have requested Defendant not to contact them again unless the consumer has called Defendant subsequent to the request;

f. Billing consumers for services that were represented as being free of charge or billing consumers at a rate higher than the rate represented to the consumer;

g. Billing consumers for calls that were not made from the consumer's telephone line unless Defendant expeditiously corrects said occurrences and credits those consumer accounts without delay. Defendant will also bear any costs associated with the incorrect charge, its correction and the crediting of the consumer account; and,

h. Defendant shall clearly and conspicuously disclose to consumers in any collection notices or billing statements the telephone number to call or address to write to dispute the charges. If a consumer disputes the charge by raising any of the grounds including, but not limited to, those listed in paragraphs (a) through (g), Defendant shall apprise the consumer of the documentation required herein to obtain a credit or refund.

7.8 Defendant shall cease and not recommence all billing of any Tennessee consumer or causing any Tennessee consumer to be billed for any pay-per-call service offered by Defendant.

7.9 Defendant shall cease and not recommence all collection efforts in Tennessee including, but not limited to, contacting consumers or credit reporting agencies, and shall not otherwise cause another to attempt to collect any monies from a Tennessee consumer for any pay-per-call service.

7.10 Defendant shall be prohibited from enforcing, collecting or otherwise failing to rescind any transaction which occurred after the entry of this Judgment and which also resulted from any violation by Defendant of this Judgment or any state or federal law, regulation or rule.

8. FORFEITURES IN FAVOR OF CONSUMERS

8.1 Defendant hereby retracts and forfeits any claim to all outstanding collections and charges allegedly owed by Tennessee consumers for pay-per-call services. Defendant, therefore, represents that these charges can not be collected under Tennessee law. If, as a result of any such alleged charges or "collectibles," Defendant has reported any consumers to any reporting agency, Defendant shall contact the credit reporting agency and have the claim removed from the consumer's credit history. Further, Defendant will not sell or otherwise transfer any alleged charges or accounts to

any entity or person other than a law enforcement agency for law enforcement purposes except as set out in Provision 8.2.

8.2. From the date of entry of this Judgment, Defendant shall not be permitted to enter into a contract or agreement to sell or otherwise transfer its customer list or other compilation or documentation of consumer information to any entity or person other than a law enforcement agency for law enforcement purposes. Defendant certifies that it is continuing to conduct certain credit card billing for pre-subscription minutes and that it is necessary to be able to share consumer information with the merchant banking institution involved in the billing process. Defendant may only disclose the information necessary to complete these specific transactions. Otherwise, the Defendant is prohibited from disclosing this necessary information to any person or entity other than the specific parties in the instances detailed above.

8.3 Defendant shall resolve all consumer complaints filed with the State of Tennessee or the Division of Consumer Affairs by Tennessee consumers and, as such, Defendant shall provide, within thirty (30) days of the request, a refund equal to the full amount paid by the consumer for Tennessee consumers who: (1) have paid Defendant in response to collection activities since August 2000; and (2) either (a) have pending a request with the Office of the Attorney General for a refund from Defendant as of the date this Judgment and Consent Decree is entered: or (b) file a complaint with the Attorney General's office within sixty (60) days of the date of entry of this Judgment; and (3) that alleges conduct by Defendant that is alleged to be a violation of Tennessee and/or Federal Law; (4) where such complaint was received in the ordinary course of business. In the event that Defendant declines a consumer's refund forfeiture request, the State shall be the final arbiter of whether a consumer is entitled to a refund in accordance with this Judgment.

8.4 Defendant shall post a fifteen thousand dollar (\$15,000.00) bond in favor of the Attorney General of Tennessee to cover the forfeiture described in Provision 8.3 of this Judgment. This bond shall be posted within seven (7) days of the date of entry of this Judgment.

8.5 Defendant is responsible for all costs associated with the refund and forfeiture process, including but not limited to, costs associated with the issuance of forfeiture checks and the posting of the bond detailed in Provision 8.4.

8.6 Defendant agrees to the following:

- (a) On the day of entry of this Judgment, Defendant shall provide the State with a current address and telephone number where it/he/she can be contacted and served with process in the event of default until the restitution portions of this Judgment is completed. Defendant shall further be required to provide any new address and telephone number within two (2) days of relocating to a new address or of obtaining a new telephone number. Service upon the Defendant for the purposes of enforcing Provisions 8.3, 8.4, and 8.5 of this Judgment in the event of default shall be effective upon mailing a notice via certified mail return receipt requested. If no response is received within 30 days, the State may obtain further relief and sanctions against the Defendant.
- (b) Defendant agrees that any payments required to persons under this Judgment for each incident are priority claims under 11 U.S.C. § 507 (a)(6) to the extent of the statutory amount. Any amounts due persons in excess of the 11 U.S.C. § 507(a) and (b) amounts may have different priorities.
- (c) In the event of default of any restitution provision of this Judgment or any substantive proceeding based upon the restitution amount, Defendant agrees that all statements set forth in the State's Complaint shall be deemed to be admitted for the limited purpose of establishing non-dischargeability of all sums paid hereunder. Specifically, Defendant agrees that all sums are nondischargeable under 11 U.S.C. § 523(a)(2) and 11 U.S.C. § 523(a)(7). Defendant further agrees that in any subsequent proceeding based upon the monetary amount set forth in this Judgment, Defendant shall not contest the State's right to obtain the full amount due and owing. Defendant shall reaffirm any such debt if necessary in order to completely fulfill Defendant's restitution obligations to the State and shall not object in any manner or form that is contradictory to the terms of this Judgment to any proof of claim filed by the State.
- (d) Defendant agrees that any and all such sums payable by the Defendant under this Judgment are non-dischargeable in a bankruptcy case.
- (e) Defendant shall give written notice of any bankruptcy filing to:

Deputy Attorney General and Division of Consumer Affairs
Consumer Advocate & Protection Div. c/o TN Attorney General's Office,
Tennessee Attorney General's Office Post Office Box 20207
Bankruptcy Division Nashville, TN 37202-0207
Post Office Box 20207
Nashville, TN 37202-0207

- (f) Without limiting any other provision of this Agreed Final Judgment, upon default of any monetary provision of this Order, Defendant agrees to provide testimony under oath for the purposes of determining Defendant's financial status and to locate any assets available to the State for execution and seizure to fulfill the Defendant's obligations under this Order. Defendant shall be required to pay all costs associated with court reporting and transcription of such sworn statements. Defendant also agrees within five (5) business days to provide written sworn responses to the State's request for documents or other information in the event of default.

9. FORFEITURES IN FAVOR OF THE STATE

9.1 This Court enters a judgment in favor of the Plaintiff against Defendant in the amount of Twenty Thousand Dollars (\$20,000.00). Defendant shall pay the sum of Twenty Thousand Dollars (\$20,000.00) to the State of Tennessee as a monetary forfeiture in compromise and settlement of the State's disputed claims related to Defendant's past conduct. These funds may be used for attorneys' fees and costs or for consumer protection purposes at the sole discretion of the Attorney General. Said forfeiture shall be made by providing a certified or cashiers' check made payable to the "State of Tennessee" and shall be delivered to the Office of the Tennessee Attorney General, 425 Fifth Avenue, Nashville, Tennessee 37243. Forfeiture in the amount of \$20,000.00 is due on or before Defendant's execution of the Judgment. If future violations occur, they will be addressed prospectively at the discretion of the Attorney General under Provision 12 of this Judgment, other provisions of this Judgment and other applicable law.

10. NOTICE

10.1 Defendant shall immediately inform all officers and directors of Defendant and all management and supervisory employees of Defendant who presently, or at any time in the future, have responsibility for developing, authorizing, or using promotional materials, scripts, or other marketing materials for Defendant's pay-per-call services and debt collection, and all owners, officers and directors of Defendant's telemarketing agents (including "bookstores") who presently, or at anytime in the future provide pay-per-call services and debt collection to Tennessee consumers, of the terms and conditions of this Judgment and shall direct all such persons and/or entities to comply with the provisions of this Judgment.

11. GENERAL PROVISIONS

11.1 The acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendant's advertising or business practices. Further, neither Defendant nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Commerce and Insurance, the Division of Consumer Affairs or

any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of Defendant.

11.2 This Judgment may only be enforced by the parties hereto.

11.3 The titles and headers to each provision of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment.

11.4 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

11.5 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

11.6 Nothing in this Judgment shall limit the Attorney General’s right to obtain information, documents or testimony from Defendant pursuant to any state or federal law, regulation or rule.

11.7 Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Judgment shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against Defendant.

11.8 Nothing in this Judgment constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

11.9 Defendant waives and will not assert any defenses Defendant may have to any criminal prosecution or administrative action relating to the conduct described in the State’s Complaint, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Defendant has agreed to pay under the terms of this Judgment is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

11.10 No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

11.11 Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

11.12 If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

11.13 Defendant waives any and all challenges in law or equity to the entry of the Judgment by the courts. Further, Defendant has waived any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Judgment.

11.14 Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by either party within a stated time period or upon a specified date.

11.15 This Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed herein or attached hereto.

11.16 Nothing in this Judgment shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

11.17 This Judgment constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Complaint. This Judgment is limited to resolving only matters set forth in the State's Complaint.

11.18 This Judgment shall be binding and effective against Defendant upon Defendant's execution of the Judgment.

11.19 Defendant will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this

Judgment.

11.20 Defendant represents that it has read and understood this Judgment and that it understands the legal consequences involved in signing the Judgment.

12. REPRESENTATIONS AND WARRANTIES

12.1 Defendant represents and warrants that the execution and delivery of this Judgment is its free and voluntary act, that this Judgment is the result of good faith negotiations, and that Defendant agrees that the Judgment and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Judgment in good faith.

12.2 Defendant represents and warrants that signatories to this Judgment have authority to act for and bind Defendant.

13. PENALTY FOR FAILURE TO COMPLY

13.1 Defendant understands and acknowledges that pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

13.2 Defendant understands that upon execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a knowing violation of the Tennessee Consumer Protection Act.

14. COMPLIANCE WITH ALL LAWS

14.1 Nothing in this Judgment shall be construed as relieving Defendant of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

15. MONITORING FOR COMPLIANCE

15.1 Upon request, Defendant shall provide books, records or documents to the State at any time, and further, to informally, or formally under oath, provide testimony or other information to the State relating to compliance with this Judgment. Defendant shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at such other location within the State of Tennessee as is mutually agreeable in writing to Defendant and the Attorney General. This shall in no way limit the State's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

15.2 The State of Tennessee has the right to test shop Defendant for the purpose of confirming compliance with this Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendant. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Defendant in audio or video form without notice to Defendant. The Defendant agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

16. PRIVATE RIGHT OF ACTION

16.1 Nothing in this Judgment shall be construed to affect any private right of action that a Tennessee consumer may hold against Defendant.

17. NOTIFICATION TO STATE

17.1 For three (3) years following execution of this Judgment, Defendant shall notify the Attorney General, c/o Consumer Advocate & Protection Division, Post Office Box 20207, Nashville, Tennessee 37202-0207, in writing at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Defendant's status that may effect compliance with obligations arising out of this Judgment.

17.2 Any notices required to be sent to the State or the Defendant by this Judgment shall be

sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Leigh Ann Roberts
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
tel: (615) 532-9299

For the Respondent:

Sean A. Moynihan
Klein, Zelman, Rothermel and Dichter, L.L.P.
485 Madison Avenue
New York, New York 10022-5803
tel: (212) 935-6020

18. PAYMENT OF COURT COSTS

18.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendant. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED.

CHANCELLOR

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE OF TENNESSEE

PAUL G. SUMMERS
Attorney General and Reporter
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RUSSELL T. PERKINS
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(615) 532-9299

APPROVED BY:

DAVID A. MCCOLLUM, DIRECTOR
Division of Consumer Affairs

FOR THE DEFENDANT:

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PETER STOLZ
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